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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,151	05/29/2001	Richard R. Dziekan JR.	039362-0061	7471
28977	7590	04/21/2004	EXAMINER	
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			NGUYEN, THOMAS T	
			ART UNIT	PAPER NUMBER
			2174	5
DATE MAILED: 04/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/867,151	DZIEKAN ET AL. <i>[Signature]</i>	
	Examiner	Art Unit	
	Thomas T. Nguyen	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

FINAL OFFICE ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ennis,

Jr. et al. US Patent No. 5867483.

As per claim 1, Ennis discloses a system and method for graphically representing information of the operation of a communication system for a user monitoring the performance of the system as follows:

a graphical user interface that simultaneously displays information representative of the operation of the system at a plurality of **test points** to the user (Abstract, Fig. 11);

a plurality of different bandwidths simultaneously presented to the user for each of the test points “The probe is connected to a packetized data network to monitor network activity, while the console is in communication with the probe via a communications medium”, and “For each sampling interval, the probe measures the access channel and individual circuit bandwidth utilization and increments the appropriate counters associated with the percentage ranges encompassing the measured bandwidth utilizations. The console polls the probe for the

percentage counter data to selectively display the access channel or individual circuit bandwidth utilization in the form of a bar graph and pie chart" (Fig. 11), the plurality of different bandwidths displaying information representative of the operation of the system, and a graphical image representative of the operation of the system at the given test point for each bandwidth "A console in communication with the probe polls the probe after a predetermined time period, or upon user request, to retrieve data collected by the probe. The probe determines the number of bits transmitted on specified transmission circuits and an individual access channel for each predetermined sampling interval, preferably set for one second. A series of counters is utilized by the probe to collect bandwidth utilization for the access channel and the individual circuits wherein each counter represents a different bandwidth utilization percentage (i.e., the percentage of the bandwidth capacity utilized) range" (col.10 lines 48-57, Figs.13,15).

Regarding claims 2-3, in addition to what is recited in claim 1, Ennis discloses "The present invention pertains to monitoring data transmission through communications systems. In particular, the present invention pertains to monitoring methods and apparatus for measuring and displaying peak throughput in data transmission systems to assess bandwidth utilization for an entire access channel or individual transmission circuits" (col.1 lines 7-17), and " The data transmission system typically includes conventional telecommunications line types, such as T3, OC-3, North American T1 (1.544 Mbits/second), CCITT (variable rate), 56K or 64K North American Digital Dataphone Service (DDS), and a variety of data communications connections, such as V.35, RS-449, EIA 530, X.21 and RS-232.

(col.7 lines 6-12). Thus, a telephony system / a data system inherently in the scope of Ennis's communication system as mentioned above.

Regarding claims 4-5, in addition to what is recited in claim 2, Ennis's communication system inherently has a **broadband** telephony system /data system "*The data transmission system typically includes conventional telecommunications line types, such as T3, OC-3, North American T1 (1.544 Mbits/second), CCITT (variable rate), 56K or 64K North American Digital Dataphone Service*"(col.7 lines 6-10).

Regarding claim 6, in addition to what is recited in claim 1, Ennis discloses for each bandwidth associated with a given test point, a graphical image representative of the signal-to-noise ratio of the system at the given test point is presented to the user (see Appendix A, cols. 27-28).

Regarding claim 7, in addition to what is recited in claim 6, Ennis discloses for each bandwidth associated with a given test point, a shading (first color) is presented to the user if the signal-to-noise ratio of the system at the given test point exceeds a predetermined threshold, and at least one further shading (color) is presented to the user if the signal-to-noise ratio of the system at the given test point fails to exceed the predetermined threshold "*For example, the fifteen minute interval starting approximately at 22:52 and ending at 22:07 has an access channel bandwidth utilization predominately in the 91%-100% range based on the height of the concatenated bar coded utilizing code 57 to indicate the 91%-100% range. Typically, the shades from green to yellow represent codes 53-55 (i.e., 0-60%), while the shades from yellow to red represent codes 55-57 (i.e., 41-100%), however, any*

Art Unit: 2174

color scheme or other indicia may be utilized to distinguish the percentage ranges" (col.16 lines 33-42).

Regarding claims 8-15, contain similar features in scope to claims 1-7. Thus, they are rejected under similar rationale.

Response to the applicant's arguments:

Applicant's arguments have been considered but are not deemed to be persuasive to put the case in condition for allowance. The examiner's response to Applicant's primary arguments as follows:

Applicant's argument (page 6 lines 9-15) "claim 8 requires the simultaneous display of system parameters at a plurality of different test points, wherein, for each test point, a graphical image for each of a plurality of different bandwidths is also simultaneously displayed." Original independent claim 15 requires similar limitations. It is respectfully submitted that Ennis, Jr. fails to teach the features in claims 8 and 15 emphasized above". However, the Examiner is unable to find the feature "simultaneous display of system parameters" disclosed anywhere in the claim language. Therefore, this argument is not persuasive.

Applicant's argument (page 7 lines 1-7) "claims 1 and 8,15 differed in scope, in that original claim 1 failed to require the simultaneous display"; and "Examiner failed to address in any manner the simultaneous display requirements of claims 8 and 15 in the last Official Action". However, the simultaneous display requirements in

Art Unit: 2174

claims 8,15 is similar in scope to the original claim 1 as rejected using Ennis's GUI (**Fig. 11**) in the last Official Action.

“FIG. 11 is a schematic illustration of an exemplary console graphical user screen displaying the access channel bandwidth utilization (i.e., access channel utilization) for a two hour history according to the present invention”, wherein, “FIG. 13 is a schematic illustration of a portion of the exemplary console graphical user screen of FIG. 11 displaying a bar graph indicating the access channel bandwidth utilization for a two hour history according to the present invention. FIG. 14 is a schematic illustration of a portion of the exemplary console graphical user screen of FIG. 11 displaying a pie chart indicating the access channel bandwidth utilization for a fifteen minute interval selected from the bar graph of FIG. 13 according to the present invention” (col.6 lines 9-12 and lines 17-26).

For example, the original claim 1 recited “the GUI that displays information representative of the operation of the system at a plurality of test points (required at least two test points) to the user; and a plurality of different bandwidths presented to the user for each of the test points . Thus, the original claim 1 required the plurality of different bandwidths simultaneous display with (at) the tests points which is similar to amended claim 1, and as required by claims 8,15.

Furthermore, Ennis's GUI(**Fig. 11**) does simultaneously displays information representative of the operation of the system at a plurality of test points (sampling interval) to the user , wherein, for each of the test points information representative of the operation of the system at a plurality of different bandwidths is also

simultaneously presented , and a graphical image representative of the operation of the system at the given test point for each bandwidth " For each sampling interval, the probe measures the access channel and individual circuit bandwidth utilization and increments the appropriate counters associated with the percentage ranges encompassing the measured bandwidth utilizations. The console polls the probe for the percentage counter data to selectively display the access channel or individual circuit bandwidth utilization in the form of a bar graph and pie chart" (see abstract, and Fig. 11); and "A series of counters is utilized by the probe to collect bandwidth utilization for the access channel and the individual circuits wherein each counter represents a different bandwidth . . . The counter information for the fifteen minute interval is stored in the probe until transferred to the console to display the access channel and individual circuit bandwidth utilization over a user selected time interval" (summary, col. 3 lines 64-67 and col. 4 lines 14-17, Fig. 11). Thus, Ennis's system simultaneously displays all the information representative of the operation as required by claims 1,8, and 15 of the Applicant's invention.

Thus, as mentioned above, it is clearly submitted that the GUI's Fig. 11 in Ennis displays all windows (information representative of the operation) simultaneously as required by the claims 8,15 (see also summary). In addition, the Examiner, respectfully maintains that the simultaneous display which are recited in claims 8 and 15 are similar in scope to original claim 1. For instance, the original

claim 1 discloses "a plurality of different bandwidths presented to the user for each of the test points " as claimed does not require the plurality of different bandwidths ARE NOT simultaneously presented to the user for each of the test points.

Conclusion

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance." Question that concerning this communication should be directed to the Patent Examiner **Thomas T. Nguyen**, whose telephone number is (703) 308-7240 (Monday to Friday 09:30 - 6:00 ET) or *Kristine Kincaid Supervisory Patent Examiner (703) 308-0640*. Other inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900 and Official-Fax number (703) 828-9306. Please label properly on the cover page of facsimile communications.

Thomas T. Nguyen (April 19, 2004)

Kristine Kincaid
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